

REMARKS

Claims 1-6, 8-14, 16, and 17 are currently pending in the above-identified patent application.

In the above-identified Office Action, the Examiner rejected claims 1, 3, 4, 8, 10, 11, 13 and 16 under 35 U.S.C. 102(b) as being anticipated by Gauvry (U.S. Patent No. 4,742,617), since the Examiner stated that Gauvry teaches a scissors comprising a first shaft, a second shaft, a flexible pin 36, an adjustable thumb ringlet 30, and a second pin 22 (see Figs. 1-5).

Applicant respectfully disagrees with the Examiner concerning the rejection of claims 1, 3, 4, 8, 10, 11, 13, and 16 under 35 U.S.C. 102(b) as being anticipated by Gauvry. First, the word "pin" is defined as "1. A cylindrical fastener made of wood, metal, or other material used to join two members or parts with freedom of angular movement at the joint. 2. A short, pointed wire with a head used for fastening fabrics, paper, or similar materials." (See, e.g., McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Edition, Sybil P. Parker, Editor in Chief, McGraw-Hill, Inc. (1994).). Applicant wishes to point out two salient features of pins which connecting member 36 of Gauvry does not possess: (a) a pointed end; and (b) freedom of angular movement at the joint is not imparted. Concerning the first feature, Gauvry in FIG. 4 shows a most-decidedly unpin like structure. Further, claim 1 of Gauvry recites in part: "(2) a flexible connecting member secured with respect to said thumb loop and with respect to said second handle means to control relative movement therebetween, said flexible connecting member comprising: (a) a first end fixedly secured with respect to said thumb loop; (b) a second end fixedly secured with respect to said second handle means; a flexible intermediate section located between said first end and said second end to allow flexing of said central axis of said thumb loop" Moreover, in Col 4, lines 58-62, it is stated that: "A flexible connecting member 36 is positioned between the thumb loop 30 and the second gripping means 28 in such a manner as to allow some limited flexibility of the thumb loop with respect to the second gripping means 28." Additionally, in the Abstract of Gauvry it is stated that: "The thumb loop also allows for flexible rotation movement of approximately 45 degrees ... The loop is held in position by a flexible

connecting member having a flexible intermediate section to allow for the desired movement as well as allowing for return of the thumb loop to the steady state position.” These passages clearly teach an impairment of the angular movement at the joint required by the definition of “pin.”

Therefore, applicant respectfully disagrees with the Examiner concerning the rejection of claims 1, 3, 4, 8, 10, 11, 13, and 16 under 35 U.S.C. 102(b) as being anticipated by Gauvry. Gauvry does not teach the connection of the thumb loop with the scissors handle using a pin, as suggested by the Examiner.

Further, subject claim 1 recites: “...a flexible pin adapted to be inserted through the hole in said thumb ringlet and into the tubular portion of said first shaft for rotatably connecting said thumb ringlet to said first shaft; ...,” while subject claim 10 recites: means for rotatably connecting said thumb ringlet to said first shaft; Clearly, the connecting member of Gauvry does not meet the limitation of claim 1 which requires a flexible pin adapted to be inserted **through the hole** in said thumb ringlet and **into the tubular portion** of said first shaft for rotatably connecting said thumb ringlet to said first shaft. The means plus function recitation of claim 10 is clearly defined in the subject Specification, as originally filed (See, e.g. page 3, lines 1-3 of the Specification).

Since Gauvry does not anticipate and, in fact, teaches away from the present independent claims 1 and 10, Gauvry cannot anticipate claims 3, 4, 8, 11, 13, and 16, which depend therefrom. Therefore, applicant believes that no further arguments need be made with respect to these claims.

Claims 2 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gauvry (U.S. Patent No. 4,742,617), since the Examiner stated that Gauvry shows the claimed invention except it is silent about the material of the pin. The Examiner concluded that it would have been obvious to one having ordinary skill in the art to select a well known material such as plastic for the pin, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Applicant respectfully disagrees with the Examiner's rejection of claims 2 and 12 under 35 U.S.C. 103(a) as being unpatentable over Gauvry for the reasons provided hereinabove, wherein applicant has clearly shown that Gauvry teaches away from present independent claims 1 and 10, and therefore cannot render obvious dependent claims 2 and 12. Moreover, since applicant believes that claims 1 and 10 are patentable over Gauvry, claims dependent therefrom are patentable over Gauvry.

Claims 6 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gauvry (U.S. Patent No. 4,742,617) in view of Brenton et al. (U.S. Patent No. 5,125,159), hereinafter Brenton '159, since the Examiner stated that Gauvry shows the claimed invention, except it lacks a means for adjusting the force between opposing cutting portions of the scissors, but that Brenton '159 shows a pair of shears comprising a means 30 for adjusting the tension of the shear blades (see Fig. 1). The Examiner concluded that it would have been obvious to one skilled in the art to further modify Gauvry by providing the scissors with a force adjusting means to facilitate adjusting the ride of the blades as taught by Brenton '159.

Claims 9 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gauvry (U.S. Patent No. 4,742,617) in view of Brenton et al. (U.S. Patent No. 5,469,624), hereinafter Brenton '624, since the Examiner stated that Gauvry shows the claimed invention except it lacks a finger stabilizer, while Brenton '624 shows a pair of scissors comprising a finger stabilizer disposed in the vicinity of a finger ringlet (callout 26, in Fig. 1a). The Examiner concluded that it would have been obvious to one skilled in the art to modify Gauvry by providing the finger ringlet with a finger stabilizer for supporting a user's finger when in use as taught by Brenton '624.

Applicant respectfully disagrees with the Examiner concerning the rejection of claims 6, 9, 14, and 17 under 35 U.S.C. 103(a) as being unpatentable over Gauvry in view of Brenton '159 and Brenton '624, since both Brenton '159 and Brenton '624 require that the thumb ringlet be fully rotatable, flexible and interchangeable. See, for example, Col. 3, lines 4-7 of Brenton '624 where it is

stated that: "Ringlet **18** is rotatable attached to extension means **16**. It is preferred that ringlets be constructed from flexible materials so that additional motion is available to an inserted thumb of the user of the device." Gauvry, by contrast in Col. 6, lines 3-12, states: "Thus, the present invention provides a thumb loop **38** which is initially oriented in the pre-chosen natural position for most users but which is capable of slight movement to accommodate variously sized hands. Also the interconnection between thumb loop **30** and the second gripping means **28** is dampened and limited to the extent that full control of operation of the scissors is possible even with the configuration which allows initial flexibility of the thumb loop with respect to the scissors configuration." (Emphasis added by applicant.).

Further, applicant is confused concerning the Examiner's use of Brenton '624, since Gauvry teaches finger rest, **54**, on finger loop **60**.

Thus, Gauvry teaches away from both Brenton '159 and Brenton '624. The design of the thumb loop of Gauvry and the manner in which it is secured to handle means **20**, does not permit any of the required functionality of the thumb ringlets of Brenton '159 and Brenton '624, namely, full rotatability, flexibility and interchangeability. As a result, there would be no motivation to combine Gauvry with either Brenton '159 or Brenton '624 to render obvious the features described by the Examiner. Applicant, therefore, respectfully believes that the Examiner has improperly combined the Gauvry reference with either of Brenton '159 and Brenton '624 and has failed to make a *prima facie* case for obviousness under 35 U.S.C. 103(a). Moreover, as stated hereinabove, since applicant believes that claims 1 and 10 are patentable over Gauvry, because Gauvry teaches away from the present claimed invention, claims dependent therefrom are likewise patentable.

Additionally, nowhere in Brenton '159 or Brenton '624 or in Gauvry is it mentioned that the thumb ringlet is adjustable, as is required by the subject claimed invention. In fact, Brenton '624 in Col. 3, lines 39-45, requires that "Once inserted into the hole, the deformable enlarged portion prevents the escape of the ringlets during use, and the extension arm may be cut off. If another ringlet is to be installed, the enlarged portion is simply cut off from the installed ringlet and that ringlet discarded." That is, if the ringlet of Brenton '624 is to be enlarged or made

smaller, it is replaced by a ringlet of suitable size. Thus, Brenton '624 teaches away from the present claimed invention. This clear departure of the invention of Brenton '624 from the present claimed invention. Gauvry also suggests a cementing process in addition to a mechanical attachment of the post which supports thumb loop 30. Thus, each of Brenton '624 and Brenton '159 teach away from Gauvry, and the combinations, if made as suggested by the Examiner, teach away from the present claimed invention, there would be no motivation to combine Gauvry with either Brenton '159 or Brenton '624.

Applicant also wishes to point out that Gauvry was removed as a reference by the Examiner in the Office Action dated March 25, 2005 in response to applicant's arguments dated March 3, 2005.

Claims 1, 3, 5, 8, 10, 11, 13, and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Nolen (U.S. Patent No. 590,330) in view of Brenton et al. (U.S. Patent No. 5,469,624), hereinafter Brenton, since the Examiner stated that Nolen teaches a scissors comprising a first shaft, a second shaft, a pin (a3), an adjustable thumb ringlet 30 and a second pin 22 (see Figs. 1-6). The Examiner continued that Nolen does not teach the pin (a3) being flexible, but Brenton teaches a flexible pin 36 so that a thumb ringlet 18 can be replaced easily. The Examiner concluded that it would have been obvious to one skilled in the art to incorporate the flexible pin of Brenton into the pin of Nolen for easily changing the thumb ringlet of Nolen.

Applicant respectfully disagrees with the Examiner concerning the rejection of claims 1, 3, 5, 8, 10, 11, 13, and 16 under 35 U.S.C. 103(a) as being unpatentable over Nolen in view of Brenton '624. First, Brenton '624 does not teach pin 36, as suggested by the Examiner. Rather, Col. 3, lines 30-35 of Brenton '624 state: "Ringlet 18 is fabricated having an arm 36 disposed generally radially to a ring member 40 adapted to be rotatably inserted into holes 14 in handle extension 16 said arm having a deformable enlarged portion at the terminus thereof." (Emphasis added by applicant.). Thus, Brenton '624 does not teach a pin, as suggested by the Examiner, but rather a ringlet having an arm 36.

Moreover, in Col. 3, lines 5-7 of Brenton '624 it is stated that: "It is preferred

that ringlets be constructed from flexible materials so that additional motion is available to an inserted thumb of the user of the device.” Nolen, by contrast, teaches in Col. 2, lines 57-66, that: “Upon the handle A², adjacent to its rear end, is mounted a thumb-holder or ring, a², preferably of sheet metal, pivoted thereto by means of a double-headed pin or rivet a³, headed loosely enough to permit said ring to be rotated on the surface of the handle in any direction desired and be retained generally at right angle or across the handle when the blades are pushed away from the operator.” (Emphasis added by applicant.). Thus, if one were to replace the pin or rivet of Nolen with the ringlet of Brenton ‘624, the ring of Nolen could not be retained generally at right angle or across the handle of the scissors of Nolen.

Additionally, in Col. 3, lines 4-9, it is stated that: “Although the thumb-handle A² is preferably provided with the ring a² as a thumb-retainer, the thumb-retainer may be in the form of a loop, as shown at a⁴ in Fig. 6, that is pivotally retained by means of the double-headed pin a³.” (Emphasis added by applicant.). Flexible ringlet 18 of Brenton ‘624 does not permit the formation of an open loop as required by Nolen in Fig. 6 thereof.

For these reasons applicant respectfully believes that the Examiner has improperly combined Nolen with Brenton ‘624 and, therefore, has failed to make a *prima facie* case for obviousness under 35 U.S.C. 103(a). (“It is not *prima facie* obvious to modify a reference so as to destroy its intended function.” In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

In view of the discussion presented hereinabove, applicants believe that subject claims 1-6, 8-14, 16, and 17, are in condition for allowance, and such action by the Examiner at an early date is earnestly solicited.

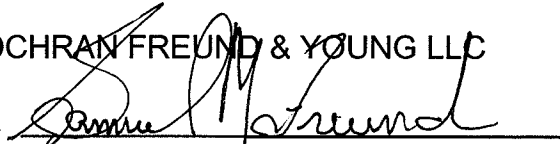
Reexamination and reconsideration are respectfully requested.

Respectfully submitted,

COCHRAN FREUND & YOUNG LLC

Date: August 29, 2006

By:

A handwritten signature in black ink, appearing to read "Samuel M. Freund", is written over a horizontal line.

Samuel M. Freund

Reg. No. 30,459

2026 Caribou Drive, Suite 201

Fort Collins, Colorado 80525

Phone: (970) 492-1100

Fax: (970) 492-1101

Customer No.: 27479